

REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested. To this end, petition is hereby made for a ***three (3) month extension of time*** to respond to the outstanding Final Office Action of ***August 31, 2010***. In addition, a Request for Continued Examination of this application is hereby made, a more formal version of this request being filed with this Amendment After Final Rejection. Although the fees for the extension of time and the Request For Continued Examination are being submitted with this Amendment After Final Rejection, the Commissioner is hereby authorized to charge any fee that should have been filed at this time to our Deposit Account No. 14-1140.

Claims 1-14, 35, 115 and 116 are pending in this application, claims 15-34 and 36-114 having been withdrawn from consideration. Upon entry of this Amendment, claims 2, 4, 7, 9 and 14 will be amended, and claims 1, 3, 5 and 6 will be cancelled.

In the outstanding Final Office Action, the Examiner rejected claim 35 under 35 U.S.C. §112, second paragraph, as being indefinite because of such claim reciting that it was dependent on “claim 1, 3”, which the Examiner contends is unclear. Claim 35 has now been amended to recite that such claim is dependent on claim 7. As such, the Examiner’s rejection of claim 35 under §112 should now be withdrawn.

In the outstanding Final Office Action, the Examiner also again rejected claims 1-4 and 8-13, under 35 U.S.C. §102(b), as being anticipated by Schulte (USPN 4,190,040), and claims 5, 6, 14, and 35, under 35 U.S.C. §103(a), as being unpatentable over Whalen *et al.* (USPN 5,562,598) and in view of Schulte. However, the Examiner indicated that claim 7 is allowed.

The Examiner is thanked for indicating in the outstanding Final Office Action that claim 7 is allowed. Claim 7 has now been amended remove the limitation reciting that the membrane (that is penetrable by an injection needle) “is flexible and taking the shape of a semi-sphere,

when it is in the first position.” This feature is recited in dependent claim 4, which has been amended to depend from claim 7. Notwithstanding the noted amendment to claim 7, Applicant believes claim 7 should be in condition for allowance because of the Examiners statement of reason for allowing claim 7. Specifically, the Examiner states that “the prior art does not tech or fairly suggests an implantable pump as claimed including a locking device which is released upon pushing the membrane and the membrane resumes its first position”. This feature is still recited in claim 7. In view of the Examiner’s statement, Applicant believes that the membrane being flexible and having a shape of a semi-sphere are features that are not needed to distinguish over the prior art.

Because the remaining claims pending in the application all depend directly or indirectly from claim 7, such claims should also now be in condition for allowance.

In view of the foregoing, it is believed that all of the claims remaining in the application, i.e., claims 2, 4, 7 – 14, 35, 115 and 116, are now in condition for allowance, which action is earnestly solicited. If any issues remain in this application, the Examiner is urged to contact the undersigned at the telephone number listed below.

Respectfully submitted,

NIXON & VANDERHYE P.C.

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